

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-18-90008

Before **TYMKOVICH**, Chief Judge

**ORDER**

Complainants have filed a complaint of judicial misconduct against a magistrate judge in this circuit. My consideration of this complaint is governed by the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “JCD Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 *et seq.*, and relevant prior decisions of the full Judicial Council of this circuit that are consistent with those authorities.

The JCD Rules and this circuit’s local misconduct rules are available to complainants on the Tenth Circuit’s web page at: <http://www.ca10.uscourts.gov/ce/misconduct>. Paper copies are also furnished by the Circuit Executive’s Office upon request. In accordance with those rules, the names of the complainant and subject judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainants, a pro se litigant and his wife, allege the subject judge engaged in misconduct while assigned to complainant’s civil matter. Complainants’ contend the

subject judge had close relationships with two of the attorneys associated with their case and should have recused. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”

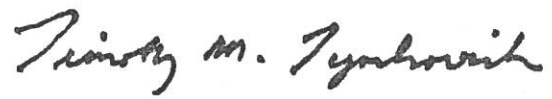
Commentary to JCD Rule 3. Accordingly, these claims are not cognizable as misconduct because they are “directly related to the merits of a decision or procedural ruling.” JCD Rule 11(c)(1)(B).

Complainants also contend the subject judge engaged in ex parte communications by asking an attorney to contact them regarding representing their mother’s estate. The JCD Rules require complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred.” *See* JCD Rule 11(c)(1)(D).

Complainants do not support their assertion that the subject judge engaged in ex parte communications with sufficient evidence to raise an inference that misconduct has occurred.

Accordingly, this complaint is dismissed pursuant to JCD Rule 11(c). The Circuit Executive is directed to transmit this order to complainants and copies to the subject judge and the Judicial Conference Committee on Judicial Conduct and Disability. *See* JCD Rule 11(g)(2). To seek review of this order, complainants must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in JCD Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 42 days after the date of the chief judge’s order. *Id.*

So ordered this 7th day of March, 2019.

A handwritten signature in black ink, reading "Timothy M. Tymkovich". The signature is written in a cursive, flowing style with a large initial 'T'.

Honorable Timothy M. Tymkovich  
Chief Circuit Judge